

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
TIME INC., HEARST CORPORATION, ADVANCE :
MAGAZINE PUBLISHERS INC., AMERICAN :
MEDIA, INC., HACHETTE FILIPACCHI MEDIA :
U.S., INC., THE MCGRAW-HILL COMPANIES, :
INC., NEWSWEEK, INC., SOURCE INTERLINK :
MAGAZINES, LLC, REED BUSINESS :
INFORMATION, A DIVISION OF REED :
ELSEVIER INC., VARIETY, INC., REED :
ELSEVIER PROPERTIES INC., BONNIER :
CORPORATION, ZIFF DAVIS PUBLISHING :
HOLDINGS INC., FORBES LLC, REIMAN MEDIA :
GROUP, INC., RD LARGE EDITION, INC., HOME :
SERVICE PUBLICATIONS, INC. and READER'S :
DIGEST LATINOAMERICA SA, :
:

Plaintiffs,

- against -

DARREN ANDREW BUDD, SALVEO LIMITED, :
CYBERNET COMMUNICATIONS, INC., :
SWITCHWORKS TECHNOLOGIES, INC.; :
HAMIDULLA GHUMAL ABBAS, YOAV :
SCHWARTZ, RICK ROSS and JOHN DOES 1-20, :
:

Defendants. :
----- X

08 Civ. 7392 (WHP)

ECF CASE

**DECLARATION OF ADRIAAN BOUTEN IN SUPPORT OF PLAINTIFFS' MOTION
FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

I, ADRIAAN BOUTEN, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am the Senior Vice President and Chief Information Officer of Information and Media Services, a division of The McGraw-Hill Companies, Inc., ("McGraw-Hill"), one of the plaintiffs in this infringement action. I am fully familiar with the facts stated herein. I submit this declaration in support of plaintiffs' motion for a temporary restraining order and preliminary injunction enjoining and restraining defendants Darren Andrew Budd ("Budd"), Salveo Limited ("Salveo"), Cybernet Communications, Inc. ("Cybernet"), Switchworks Technologies, Inc. ("Switchworks"), Hamidulla Ghumal Abbas ("Abbas"), Yoav Schwartz ("Schwartz"), Rick Ross

(“Ross”) and John Does 1-20 (collectively, “defendants”) from infringing plaintiffs’ copyrights, trademarks and trade dress.

2. McGraw-Hill is a New York corporation with its principal place of business at 1221 Avenue of the Americas, New York, NY 10020.

3. McGraw-Hill owns and publishes, among other publications, many well known magazines, including *BusinessWeek* and *Architectural Record*. These magazines are distributed throughout the United States (including in New York) and Canada, as well as in various foreign countries.

4. The purpose of this declaration is to set forth factual information and exhibits relevant to this injunction motion.

Mygazines.com Is Infringing McGraw-Hill’s Copyrights and Trademarks

5. McGraw-Hill first became aware of the Mygazines.com website a few weeks ago, at which time the website appeared to be fully populated with uniform, high-quality copies of complete magazines. Without McGraw-Hill’s knowledge, consent or authorization, Mygazines.com was displaying complete copies of numerous issues of *BusinessWeek* and *Architectural Record*, both published by McGraw-Hill.

6. Specifically, the full text of the following magazines owned and published by McGraw-Hill are being displayed by defendants on the Mygazines.com website without our consent:

(a) *BusinessWeek* Issues

Volume 4084 Number 20, Issue Date May 19, 2008
Volume 4085 Number 21, Issue Date May 26, 2008
Volume 4086 Number 22, Issue Date June 2, 2008
Volume 4087 Number 23, Issue Date June 9, 2008
Volume 4088 Number 24, Issue Date June 16, 2008
Volume 4089 Number 25, Issue Date June 23, 2008
Volume 4090 Number 26, Issue Date June 30, 2008
Volume 4091 Number 27, Issue Date July 7, 2008
Volume 4092 Number 28, Issue Date July 14 and 21, 2008

Volume 4093 Number 30, Issue Date July 28, 2008
Volume 4094 Number 31, Issue Date August 4, 2008
Volume 4095 Number 32, Issue Date August 11, 2008

(b) Architectural Record Issues

Volume 196 Number 5, Issue Date May 2008
Volume 196 Number 6, Issue Date June 2008
Volume 196 Number 7, Issue Date July 2008

McGraw-Hill has obtained a Certificate of Registration No. TX 6-646-795 for *BusinessWeek*, Volumes 4084 through 4095, Issues dated May 19-August 11, 2008 and Certificate of Registration No. TX 6-646-794 for *Architectural Record*, Volume 196, Numbers 5-7, Issues dated May, June and July 2008 on August 11, 2008. A copy of the certificates of registration are annexed hereto as Exhibit A.

7. McGraw-Hill also owns trademark rights in the titles of its magazines. Specifically, McGraw-Hill holds the following trademark registrations relating to *BusinessWeek* and *Architectural Record* magazines:

(a) *BusinessWeek* and its logo are registered in International Classes 9, 16, 35, 36 and 41, including under the following United States Patent and Trademark Office Registration Nos. 549,742; 1,746,837; 1,938,462; and 2,467,035.

(b) *Architectural Record* is registered in International Class 16 including under the United States Patent and Trademark Office Registration No. 2,218,444.

8. McGraw-Hill is the owner of common law trademark rights in its magazine titles as well, based on its use of its marks in commerce over the period of many years, and the wide recognition of those marks by consumers as an indicator of the source of McGraw-Hill's products. The McGraw-Hill magazines *BusinessWeek* and *Architectural Record* have been published and distributed by McGraw-Hill for many decades in the United States and Canada as well as in numerous foreign countries. *BusinessWeek* has an estimated readership of approximately 4.6 million and *Architectural Record* has an estimated readership of

approximately 345,000. Accordingly, these trademarked magazine titles are widely known worldwide and constitute famous marks.

9. In addition, McGraw-Hill has rights to the trade dress of its magazines. Each magazine has a distinctive cover with a stylized logo that functions as a source indicator to consumers, and is non-functional. Without authorization, Mygazines.com displays the covers of *BusinessWeek* and *Architectural Record* magazines on the website, infringing McGraw-Hill's trade dress in those covers.

10. McGraw-Hill has not authorized or licensed defendants to post any content from McGraw-Hill's magazines on the Mygazines.com website.

11. Indeed, McGraw-Hill operates a websites for its magazine titles, and offers some of the content available in the print editions of its magazines through those sites. McGraw-Hill earns revenue from its websites by, among other things, offering advertising space to advertisers in conjunction with McGraw-Hill's content for certain parts of its web sites, and collecting subscription fees for those portions of its web sites for which access is restricted to paid subscribers. By offering the same content to consumers on its site, for free, Mygazines.com directly competes with McGraw-Hill's websites.

12. McGraw-Hill also offers digital editions of its magazines for sale through online partners such as Zinio.com. At Zinio.com, consumers may view, for a fee, digital editions of McGraw-Hill's magazines, in much the same format as is offered by Mygazines.com. For this reason, Mygazines.com also competes directly with McGraw-Hill's digital publications offered through its online partners.

McGraw-Hill Gave Defendants Notice of Their Infringing Activity

13. On July 25, 2008, McGraw-Hill, though its outside counsel, wrote to defendant Salveo, the registered owner of Mygazines.com, at the address listed on its domain registration

and its email address, demanding that it cease and desist from providing McGraw-Hill's works to the public, in any form.

14. On July 25, 2008, McGraw-Hill, through its outside counsel, wrote to defendant Cybernet at the address listed on its website, and to its email address, demanding that it immediately disable access to the Mygazines.com website or, at a minimum, block access specifically to the magazines published by McGraw-Hill.

15. On August 1, 2008, McGraw-Hill, through its outside counsel, wrote to Switchworks at the address listed on its website, and to its email address, demanding that it immediately disable access to the Mygazines.com website or, at a minimum, block access specifically to the magazines published by McGraw-Hill.

Defendants' Conduct is Causing McGraw-Hill Irreparable Harm

16. This application is brought on by way of Order to Show Cause because expedited relief is necessary due to the irreparable harm McGraw-Hill is suffering and will suffer from defendants' continued infringement of McGraw-Hill's copyrights, trademarks and trade dress.

17. McGraw-Hill invests substantial monies and effort to develop and publish high-quality magazines. These magazines are the product of creative vision and hard work by scores of professionals. Defendants have simply stolen this valuable intellectual property of McGraw-Hill and appropriated it for their own ends, seriously impacting McGraw-Hill's goodwill and the valuable market for its magazines. This blatant, wholesale theft undermines the entire magazine publishing industry, and causes irreparable injury to McGraw-Hill. It is particularly outrageous that defendants use the names and images of our magazines to advertise its website, and then post the infringing copies of our publications online in a way that replicates the experience of reading our magazines and entirely supplants the market for the authorized magazines.

WHEREFORE, for the foregoing reasons, together with those set forth in the accompanying summons and complaint, declaration of other plaintiffs, and memorandum of law, your deponent respectfully prays for a temporary restraining order and preliminary injunction enjoining and restraining defendants from distributing or displaying McGraw-Hill's magazines, and from inducing and encouraging its users to upload our content.

Dated: August 19, 2008


ADRIAAN BOUTEN

Exhibit A
To
Declaration of Adriaan Bouten

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Margareth Peters

Register of Copyrights, United States of America



Form SE/Group
UNITED STATES COPYRIGHT OFFICE

REGIS[®]

TX 6-646-794



#189086646794

EFFECTIVE DATE OF REGISTRATION

AUG 11 2008

APPLICATION RECEIVED
AUG 11 2008

ONE DEPOSIT RECEIVED
AUG 11 2008

EXAMINED BY

CORRESPONDENCE ☐

DO NOT WRITE ABOVE THIS LINE.

1

List
in order of
publication

No
previous
registration
under
identical
title

TITLE ▼

Architectural Record

ISSN ▼

0003-858X

Volume ▼	Number ▼	Issue date on copies ▼	Month, day, and year of publication ▼
1. 198	5	May 2008	April 27, 2008
2. 198	6	June 2008	May 27, 2008
3. 198	7	July 2008	June 24, 2008
4.			
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14.			

2

NAME AND ADDRESS OF THE AUTHOR/COPYRIGHT CLAIMANT IN THESE COLLECTIVE WORKS MADE FOR HIRE ▼

The McGraw-Hill Companies, Inc., 2 Penn Plaza, 10th floor, New York, New York 10121

FOR NON-U.S. WORKS: Author's citizenship ▼

Domicile ▼

Nation of publication ▼

CERTIFICATION*: I, the undersigned, hereby certify that I am the copyright claimant or the authorized agent of the copyright claimant of the works identified in this application, that all the conditions specified in the instructions on the back of this form are met, that I have deposited two complimentary subscription copies with the Library of Congress, and that the statements made by me in this application are correct to the best of my knowledge.

Handwritten signature (X) *Bonnie Beacher*

Typed or printed name *Bonnie Beacher*

PERSON TO CONTACT FOR CORRESPONDENCE ABOUT THIS CLAIM

Name *Bonnie Beacher*

Daytime telephone *(212) 904-6939*

Address (if other than given below)

Fax *(212) 904-2346*

Email *bonnie_beacher@mcgraw-hill.com*

Certificate
will be
mailed
in window
envelope
to this
address:

Name ▼

Bonnie Beacher c/o The McGraw-Hill Companies, Inc.

Number/Street/Apt ▼

2 Penn Plaza, 10th floor

City/State/Zip ▼

New York, New York 10121

DEPOSIT ACCOUNT

Account number *DA-011878*

Name of account *McGraw-Hill*

Professional Book Group

MAIL TO:

Library of Congress
Copyright Office
101 Independence Avenue SE
Washington, DC 20559-6000

*17 USC §508(e): Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 409, or in any written statement filed in connection with the application, shall be fined not more than \$2,500.

Certificate of Registration



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Marybeth Peters

Register of Copyrights, United States of America



Form SE/Group
UNITED STATES COPYRIGHT OFFICE

TX 6-646-795



#TX00666467954

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APPLICATION RECEIVED
AUG 11 2008

ONE DEPOSIT RECEIVED
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EXAMINED BY *JK* CORRESPONDENCE ☐

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1

List
in order of
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No
previous
registration
under
identical
title

TITLE ▼

Business Week

ISSN ▼

0007-7135

Volume ▼	Number ▼	Issue date on copies ▼	Month, day, and year of publication ▼
1. 4084	20	May 19, 2008	May 8, 2008
2. 4085	21	May 26, 2008	May 15, 2008
3. 4086	22	June 2, 2008	May 22, 2008
4. 4087	23	June 9, 2008	May 29, 2008
5. 4088	24	June 16, 2008	June 5, 2008
6. 4089	25	June 23, 2008	June 12, 2008
7. 4090	26	June 30, 2008	June 19, 2008
8. 4091	27	July 7, 2008	June 26, 2008
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10. 4093	30	July 28, 2008	July 17, 2008
11. 4094	31	August 4, 2008	July 24, 2008
12. 4095	32	August 11, 2008	July 31, 2008
13.			
14.			

2

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FOR NON-U.S. WORKS: Author's citizenship ▼

Domicile ▼

Nation of publication ▼

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Handwritten signature (X) *Bonnie Beacher*

Typed or printed name *Bonnie Beacher*

PERSON TO CONTACT FOR CORRESPONDENCE ABOUT THIS CLAIM

Name *Bonnie Beacher*

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Address (if other than given below)

Fax *(212) 904-2340*

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Certificate will be mailed in window envelope to this address:

Name ▼	Bonnie Beacher c/o The McGraw-Hill Companies, Inc.
Number/Street/Apt ▼	2 Penn Plaza, 10th floor
City/State/Zip ▼	New York, New York 10121

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Washington, DC 20559-6000

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